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ABSTRACT

This paper addresses the legal tension between a teacher's right to privacy and a school board's right to demand exemplary conduct by teachers in and out of school. The watershed case in the area of a teacher's right to a private life appears to be "Morrison v. Board of Education" (California 1969), which identified factors that a board may consider when determining whether a teacher's conduct indicates unfitness to teach. Authority for the proposition that teachers serve as role models for students is examined in part 1. Part 2 discusses the emergence of the "nexus issue," where school boards that terminate a teacher's contract for immoral conduct must show a connection between the teacher's conduct and a likely negative effect on the school ("substantial nexus"). Cases that illustrate the range of issues involved and the reasoning of various courts are discussed in parts 3 and 4. The cases involved sexual misconduct, moral turpitude, theft of school district funds/property, abuse of sick leave, and theft/burglary. Overall, the past 25 years have seen a general trend of judicial leniency toward the teaching profession. While the courts are extremely aware of the "special role" that teachers play in society, they nonetheless exhibit a growing tendency to balance societal interests with the private rights of a teacher. Virtually no behavior except criminal offenses and student/teacher sexual relationships constitute immorality per se. Since the "Morrison" decision, the courts evaluate each situation on a case-by-case basis. However, the current wave of privacy cases will probably not end controversy over the issue of teachers as role models. Two flow charts illustrate the legal analysis that most courts follow when examining these issues. (LMI)

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TERMINATING TEACHERS AND REVOKING THEIR LICENSURE FOR CONDUCT BEYOND THE SCHOOLHOUSE GATE

By
Clifford P. Hooker, Ed.D.**

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TERMINATING TEACHERS AND REVOKING THEIR LICENSURE FOR CONDUCT BEYOND THE SCHOOLHOUSE GATE

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There is considerable agreement between teachers and parents that teachers serve as role models in the classroom. But does this duty to serve as an exemplar extend beyond the schoolhouse gate? Historically, parents and school officials have maintained that a teacher cannot lead two lives–one as a role model in school and another as a private citizen. It was assumed that one who chose a career in teaching surrendered a substantial measure of individual privacy. The sacrifice of individual freedom was a necessary adjunct to the overriding goal of guiding the nation's youth to moral ground that was equal to or above the standards of the community. Robert R. Hamilton, one of the pioneers in the field of school law, emphasized this point when he wrote, "When he enters the teaching profession, a person legally surrenders a measure of his freedom of action. It should be remembered that a teacher may legally be free to be immoral, so long as he violates no law, but he is not legally free to be a teacher and engage in immoral conduct." [R.R. Hamilton, 4 Bi-Weekly School Law Letter 87 (December 23, 1954).]

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In the forty years since Hamilton wrote what was thought to be the "settled law" on the teacher's right to privacy, or more precisely, the lack thereof, the teachers have fought back. They have asked the courts to restore them to their teaching positions when school boards have terminated their contracts for questionable conduct beyond the schoolhouse gate.

This paper addresses the legal tension between a teacher's right to privacy and a school board's right to demand exemplary conduct by teachers in and out of school. Authority for the proposition that teachers serve as role models for students is examined in Part I. Part II discusses the emergence of the "nexus" principle–a legal requirement that school boards that terminate a teacher's contract for immoral conduct must show a connection between the teacher's conduct and a likely negative effect on the school. Samples of cases that illustrate the range of issues involved and the reasoning of various courts are discussed in Parts III and IV. The paper concludes with a summary and two flow charts that illustrate the legal analysis that most courts follow when examining these issues.

I. Teachers as Role Models

> If then, the manners of the teacher are to be imitated by the pupils, if he is the glass, at which they 'do dress themselves,' how strong is the necessity, that he should understand those nameless and innumerable practices, in regard to deportment, dress, conversation, and all personable habits, that constitute the difference between a gentleman and a clown. We can bear some oddity, or eccentricity in a friend whom we admire for his talents, or revere for his virtues, but it becomes quite a different thing, when the oddity, or the eccentricity, is to be a pattern or model, from which fifty or a hundred children are to form their manners.

[Fourth annual report of the Boston Board of Education 1841, P. 57. Quoted in The American Teacher, Willard Elsbree, American Book Co. 1939. P. 297.]

Any legal obligation a teacher has to serve as an exemplar or role model for students rests on the belief that students, at least in part, acquire their social attitudes and behaviors by copying those of their teachers. In the early cases the courts accepted this premise as a self-evident fact. For example, the Missouri Court of Appeals wrote in 1885:

> The cross-bill alleges various acts of adultery by plaintiff in St. Louis and elsewhere, with various women during the years 1865, 1875 and 1876, and other gross indignities from plaintiff to his wife in 1875 and 1876. There may be causes for the removal of a teacher affecting the discipline of the school over which he presides, entirely outside of any question of his learning, ability, power of enforcing discipline, or moral qualities, and outside of his own acts, as in the present instance. It was not for the board of directors to prejudge, or even to examine, the charges brought against this teacher by his wife; but the mere fact that charges of this character were brought against him, and that the fact had become notorious, rendered it highly inexpedient that he should remain as a teacher of higher classes frequented by youths between the ages of 14 and 20. It is unnecessary to dwell upon this. Such would be the common sense of all fathers and mothers having a parental regard for the morals of their children.
>
> [McLellan v. Board of the St. Louis Public Schools, 15 Mo. App. 362, 365-366 (1884).]

Woven through the entire fabric of humanity--from education theory, medical theory, sociology theory, and psychological theory, there rests the premise that teachers are role models. Teachers walk into the classroom and by their presence give a message to students. A few examples illustrate the wide acceptance of the notion that teachers are role models.

1. School desegregation cases

   The argument has been used successfully in numerous school desegregation cases. The hiring of additional minority teachers has been ordered by federal courts even when there was no showing that the school district practiced racial discrimination in employment. The courts have said that minority students benefit from the model of a minority person in a teaching position.

2. Medical science

An editorial in a 1985 issue of the Journal of Drug Education reminds doctors and nurses in health education programs that they are role models for their students: "These professionals give a message by nonverbal conduct." The editorial goes on to say that health educators should not smoke tobacco so they can tell their students and patients not to smoke.

3. Ethnic studies

Kleinfeld has conducted studies on effective teachers of Indian and Eskimo high school students. A study she did in 1972 revealed that a form of teacher nonverbal modeling called "social harmony"--a highly valued tradition among Indians and Eskimos--created an emotional closeness between teachers and students.

4. The field of Education and Psychology

William James, a professor of psychology and founder of the Harvard Psychology Laboratory, said in his talks to teachers (1891-1898):

> "The challenge of the teacher is to lead the child by a process of association and remember that behavior is the natural effect of impressions that are received by the students' mind."

5. Lenin, Premier of Russia (1917-1924), said, "Give us the child for eight years and it will be Bolshevist forever."

6. J. B. Watson, psychologist (1926):

> "Give me a dozen healthy infants and my own specific world to bring them up and I'll guarantee to take any one of them at random and train him to become any type of specialist I might select--doctor, lawyer, artist, beggar man or thief--regardless of his talents, abilities, vocations and race of ancestors."

7. John Dewey:

> "There cannot be two sets of ethical principles, or two forms of ethical theory, one for life in the school and the other for life outside of the school as conduct is one, the principles of conduct are also one."

8. Emile Durkhiem:

> "The influence of teachers covers the physical, intellectual and moral status of the pupil."

9. United State Supreme Court

Justice Powell, writing for the majority in Ambach v. Norwick, [99 S.Ct. 1589, 1595 (1979),] said:

> A teacher serves as a role model for his students, exerting a subtle but important influence over their perceptions and values. Thus through both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitude of students toward government, the political process and a citizen's social responsibilities. This influence is critical to the continued good health of a democracy.

II. A Nexus is Created

The watershed case in the area of a teacher's right to a private life appears to be Morrison v. Board of Education [461 P. 2d 375 (Cal. 1969)]. The case concerned Marc Morrison, a teacher for the Lowell Joint School District. Sometime during April, 1963, Mr. Morrison engaged in a "limited noncriminal" physical relationship with a fellow public school teacher, Fred Schneringer, to whom he had been giving "counsel and advice" about his "grave marital and financial difficulties." Morrison had never been accused or convicted of any criminal activity and the record contained "no evidence of any abnormal activities or desires by (Morrison) since the Schneringer incident some six years in the past."

One year after the incident, Schneringer reported it to the superintendent of the Lowell Joint School District. As a result, Morrison resigned from his teaching job on May 4, 1964. Nineteen months later, the State Board of Education held hearings to determine whether to revoke Morrison's life diplomas. Even though no evidence was presented that he had ever committed any act of misconduct while teaching, the board eventually concluded that the

incident "constituted immoral and unprofessional conduct, and an act involving moral turpitude, all of which warrant revocation of life diplomas."

The Supreme Court of California overturned the board's decision because it found that the applicable statute only allowed the dismissal of teachers whose immorality, unprofessional conduct or moral turpitude rendered them unfit to teach. Otherwise, the court said, "the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state; since many people believe 'laziness, gluttony, vanity, selfishness, avarice and cowardice' to constitute immoral conduct." After all, "(t)oday's morals may be tomorrow's ancient and absurd customs. . . (a)nd conversely, conduct socially acceptable today may be anathema tomorrow."

The court went on to discuss the factors that a board may consider when determining whether a teacher's conduct indicates unfitness to teach. These included:

1. Likelihood that the conduct may have adversely affected students or fellow teachers;
2. The degree of such adversity anticipated;
3. The proximity or remoteness in time of the conduct;
4. The type of teaching certificate held by the party involved;
5. The extenuating or aggravating circumstance, if any, surrounding the conduct;
6. The praiseworthiness or blameworthiness of the motives resulting in the conduct;
7. The likelihood of the recurrence of the conduct;

   and
8. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved, or other teachers.

In summary, the court was saying that an individual can be removed from the teaching profession as unfit to teach only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees or others who might be affected by his actions as a teacher. It is important to understand that the Morrison standards are best suited for cases involving immoral conduct or moral turpitude and are least applicable to termination for incompetence.

Gone were the days, at least in California, when a school board could dismiss a teacher merely for engaging in "immoral conduct," which usually translated as an action that was contrary to prevalent community beliefs. In the earlier parts of the 20th century a simple rumor was enough to ruin a teacher's career, irrespective of whether or not it was true. Now, the court was saying, some connection must be shown between a teacher's actions and his ability to teach.

Over the past 25 years, since Morrison, this ruling has created what is known as the "nexus issue." In recent cases, courts have basically upheld a teacher's right to privacy unless a "substantial nexus" is drawn between behavior and classroom effectiveness. Typically, the nexus will not be found unless (1) the incident involved the student population or youth of a similar age; (2) the incident was widely publicized; (3) the incident occurred in a "public place" and thus the teacher forfeited his right to privacy; or (4) the incident was just part of a larger, irremediable, chronic "problem" or behavior pattern.

Even so, teachers are still entitled to procedural due process. Even when the "substantial nexus" exists, the courts have often overturned boards' decisions for the reason that the employee wasn't given a fair hearing or a warning. On the issue of warnings, the courts have generally found that a teacher is entitled to a warning (and thus cannot be fired legitimately without one) only when his/her behavior (immoral act) can be termed "remediable." For this, the courts employ

a two-pronged test:

1. Has damage been done to the students, faculty or school?
2. Could the conduct resulting in that damage have been corrected had the teacher's superiors warned him?

If the answer to these questions is "yes" and "no" respectively, no warning is required.

III. Examples of Cases Involving Sexual Misconduct

A *WESTLAW* search revealed that over 700 courts have cited Morrison in cases involving alleged immoral conduct or acts of moral turpitude by public school teachers. A thorough analysis of all of these rulings is beyond the scope of this paper. Rather, I will discuss a few cases that illustrate the range of issues treated by the courts, calling attention in some instances to how courts have followed or distinguished Morrison.

1. Nicholson v. Ind. School District No. 363, 1992 WL 48113 (Minn. App.). (This opinion is designated as unpublished. Not reported in N.W. 2d.) Decided March 17, 1992.

   A. Location of alleged misconduct

   > "[The teacher] claims that the alleged misconduct is completely unrelated to his employment because the misconduct did not occur on school premises or during school hours. We do not believe that conduct must occur in the classroom to be related to the teaching relationship. Here, the record supports the conclusion that [the teacher] used his position as a teacher, a coach and tutor to lure [the student] into a situation where he may have been more vulnerable to sexual touch. These actions are sufficiently related to his position as a teacher to render the acts 'conduct unbecoming a teacher.' The fact that the conduct did not occur in the classroom does not place the conduct outside of [the teacher's] teaching role."

B. Current fitness to teach

"[The teacher] argues that due process requires that the board make a finding of his current fitness to teach. However, the statute does not require a finding that the alleged immoral conduct adversely affected the teacher's fitness to teach. Rather, the statute permits immediate discharge upon a finding that the teacher has engaged in any of the prohibited conduct. Minnesota courts have [taken the position] that some conduct so clearly interferes with ability to teach that immediate termination is justified. This is particularly so when the conduct involves sexual impropriety with a student (citations omitted). In fact, proof of a teacher's sexual acts with a student is uniformly held to be sufficient grounds for dismissal (citations omitted). The statute does not require a specific finding of fitness to teach . . ."

(The Minnesota court went on to explain that it does not follow the Morrison ruling.)

C. Definition of immoral conduct

"[The teacher] also argues that the statute is unconstitutionally vague as he was not put on notice of what conduct is prohibited by the phrase 'immoral conduct' and conduct 'unbecoming a teacher.' To prevail [the teacher] must show that the statute lacks specificity as to his own behavior and not as to some hypothetical situation. While the phrase may be vague in some hypothetical cases involving issues of morality and teacher fitness, this is not such a case. Here, a teacher engaged in conduct that is so contrary to all restrictions placed on a teacher that he could not possibly believe that the conduct did not fall under the statutory prohibition . . . We believe that a teacher's knowing use of his position of authority to engage in sexual misconduct with a minor student is an example of such conduct."

(Again, the Minnesota court rejected one of the Morrison "factors".)

D. Statute of limitations (Is the case barred by time?)

"[The teacher] asserts that evidence of events occurring 21 years ago ought not be considered because the events are too remote in time to be meaningfully adjudicated. However, the legislature placed no limitations period Minn. Stat. 125.12 subd. 8. [The teacher's] effort to have this court read a statute of limitations into this section because the claim would be time barred in a civil or a criminal court is unavailing. The fact that this claim is barred in criminal or civil court is irrelevant in light of the legislature's determination that there be no time restrictions on the

evidence a school board may consider in a termination hearing . . . Minnesota courts have permitted similar evidence of long past events in teacher termination hearings. For example in Fisher v. Ind. School District No. 622 (367 N.W. 2d 152, Minn. App. 1984), we permitted the consideration of evidence concerning events happening 16 years before the hearing. Noting that by virtue of the nature of the offense--sexual intercourse with a minor student of the district--it may be considered doubtful whether such conduct could ever be too remote in time."

(Another Morrison factor is disregarded by the Minnesota court.)

2. Lile v. Hancock Place School District, 701 S.W. 2d 500, 29 Ed. Law Rep. 848 (Mo. App. 1985).

A tenured school teacher was terminated due to alleged "immoral conduct" committed in his home, allegedly involving the daughters of the woman with whom he lived. The Missouri Court of Appeals held that: (1) termination was supported by sufficient evidence; (2) school board showed sufficient nexus between the alleged activity and the school community; (3) teacher's right of privacy was not violated.

3. Schmidt v. Board of Education of Raytown, 712 S.W. 2d 45, 33 Ed. Law Rep. 918 (Mo. App. 1986).

Missouri Court of Appeals upheld the discharge of two male wrestling coaches for "immoral conduct rendering them unfit to teach." The coaches, six boys from the wrestling team, four female cheerleaders, and one female chaperon traveled to Columbia, Missouri and stayed at a motel during the State Wrestling Meet. The coaches and the female chaperon left the motel early in the evening to attend a party where they drank alcoholic beverages. They returned to the motel at 1:30 a.m. Although separate rooms were available, the coaches allowed male and female students to sleep in the same rooms. Likewise, one of the coaches and the female chaperon slept in the same bed while the other coach and a female student occupied the second bed in the same room.

4. Lang v. Lee, 639 S.W. 2d 111, 6 Ed. Law Rep. 1183 (Mo. App. 1982).

The court upheld the termination of tenured teacher's contract who showed pornographic magazines and movies to minor students in his home.

5. Pettit v. State Board of Education, 513 P. 2d 899 (Cal. 1973).

Note: This case was decided by the California Supreme Court four years after Morrison. The Court in Pettit distinguishes Morrison, upholding the revocation of the teaching certificate of an elementary school teacher who engaged in certain acts of sexual misconduct.

Facts

1. Elizabeth Pettit and her husband applied for membership in "The Swingers," a private club in Los Angeles evidently devoted primarily to promoting diverse sexual activities between members at club parties.

An undercover officer working for LAPD was accepted into membership and attended a party at a member's residence. Throughout the evening the officer saw various couples engaging in sexual intercourse. More than 20 persons were alternately engaged in various sex acts or observing while others were so engaged. In a single hour the officer observed Pettit commit three separate acts of oral copulation with three different men.

Pettit was arrested and charged with violating a section of the California Penal Code. A plea bargain was arranged and Pettit pleaded guilty to "outraging public decency," a misdemeanor. Pettit was fined and placed on probation.

An action was initiated to revoke Pettit's teaching credential on the grounds that her conduct involved moral turpitude and demonstrated her unfitness to teach. Pettit did not appear at the hearing but her husband was present and disclosed that he and his wife had appeared on a television show where they talked freely about their lifestyle. The State Board of Education accepted the hearing officer's conclusion that Pettit's acts rendered her unfit to teach.

Distinguishing Morrison

Morrison	Pettit
A. Unspecified conduct at issue (oral copulation was not involved).	A. Oral copulation.
B. Conduct at issue occurred entirely in private and involved only two persons.	B. Conduct involved three different partners with witnesses.
C. Board acted without sufficient evidence of unfitness to teach.	C. The board heard expert testimony asserting Pettit's unfitness to teach, poor role model, advocate for unacceptable morals.

6. Morris v. Clarksville-Montgomery County Consolidated Board of Education, 867 S.W. 2d 324, 88 Ed. Law Rep. 461 (Tenn. App. 1993).

James Morris, a tenured teacher, sought judicial review of an action by the school board terminating him from his position as band director. Suit was dismissed by the trial court and Morris appealed. The court of appeals held that the evidence supported dismissal on grounds of unprofessional conduct.

Facts

- Morris allowed one of his students to stay overnight in his home on more that one occasion and slept in the same bed and had sexual contact with him.
- He invited and allowed other male students (one at a time) to stay overnight in his home and sleep in the same bed with him.
- The principal and assistant principal learned about the overnight visitors and warned Morris.
- Some of the boys in the band who had been visitors at Morris' home became discipline problems at school.
- After the boys refused further contact with Morris in his home, he punished them for their misconduct at school.

Rationale

- "A determination of whether a teacher is guilty of unprofessional conduct is largely discretionary. The effect of the [teacher's challenged conduct] on school is an important element."
- "A teacher's acts need not be committed in the presence of pupils in order to be classified as unprofessional."
- Citing Morrison v. State Board of Education [461 P. 2d 261 (1969)] the court said: "Unprofessional conduct means conduct indicating an unfitness to teach."

IV. Examples of Cases Involving "Moral Turpitude"

Drug Use and Distribution

1. Board of Education of Hopkins County v. Wood, 717 S.W. 2d 837, 35 Ed. Law Rep. 824 (Ky. 1986).

Two male tenured teachers were terminated on charges of immoral conduct. The Supreme Court of Kentucky upheld the terminations saying the teachers could be discharged for off-campus smoking of marijuana with two 15-year old female students. The court explained: "Immoral or unbecoming conduct sufficient to merit discharge of a tenured teacher, when it occurs in context other than professional competency in the classroom, must have some nexus to the teacher's occupation." In this instance the court said despite the fact that the challenged conduct occurred during off-duty hours, during the summer months and in the house of the teachers, the marijuana smoking is criminal conduct that has a harmful effect on the school.

2. West Valley-Mission College v. Conception, 21 Cal. App. 6 Dist., 84 Ed. Law Rep. 365 (1993).

Winston Miller was a community college teacher until he was arrested and charged with selling cocaine in September, 1986. The college commenced disciplinary proceedings to discharge Miller which resulted in a hearing before an arbitrator.

In the criminal proceedings, Miller's first trial resulted in conviction, but the trial court granted a new trial motion based on incompetent assistance of counsel. Miller was acquitted in his second criminal trial.

After the disciplinary hearing the arbitrator found that Miller was guilty of immoral conduct, but not unfit to teach, and the penalty should be one year's suspension without pay. Both Miller and the college appealed. The trial court directed the arbitrator to order Miller's dismissal from his teaching position, with no back pay. Miller appealed.

Ruling

The California Court of Appeals affirmed, finding no error in the trial court's determination that the facts in this case met the following factors as set by the California Supreme Court in Morrison [461 P. 2d 375 (1969)]:

- Miller's conduct adversely affected students and teachers, achieved some notoriety, and irretrievably compromised his relations with faculty and students.
- The college pursued the disciplinary proceedings close in time to the immoral conduct.
- There were no extenuating circumstances.
- Miller was unfit to teach.

Further, the court said that it was not required to consider all of the Morrison factors. The court emphasized the following language in Morrison: "The fact finder may consider [the listed factors]."

Theft of School District Funds/Property

3. Cochran v. Board of Education of Mexico, Missouri, 815 S.W. 2d 55, 69 Ed. Law Rep. 1182 (Mo. App. 1991).

The Missouri Court of Appeals upheld the school board's decision to terminate the contract of a tenured vocational technical school teacher who was responsible for the district's participation in the federal surplus property program. An audit revealed that certain machinery, tools, and equipment that had been obtained at reduced costs for school district use had been sold by the teacher who allegedly kept the money. The teacher was charged with "immoral conduct."

4. Rochon v. Iberia Parish School Board, 601 So. 2d 808,76 Ed. Law Rep. 634 (La. App. 3 Cir. 1992).

A Louisiana school board discharged a tenured school bus driver when it discovered that she allegedly stole $5,138.52 from an elementary school PTA. The bus driver had served as the organization's secretary, in charge of monies collected through fund raisers.

The court rejected Rochon's argument that an act of theft lacks the moral turpitude to make it an act of immorality. The court relied on Black's Law Dictionary for a definition of "immoral:" "contrary to good morals; inconsistent with the rules and principles of morality; inimical to public welfare according to the standards of a given community as expressed in law or otherwise."

5. Kimble v. Worth County R-III Board of Education, 669 S.W. 2d 949, 17 Ed. Law Rep. 1257 (Mo. App. 1984).

The Missouri Court of Appeals upheld a school board's decision to terminate a tenured teacher. The board charged the teacher with stealing various items belonging to the school. Although the teacher returned the missing items after being confronted about the matter, the court said the teacher's conduct amounted to "immoral conduct" warranting termination of the teacher's contract.

Abuse of Sick Leave

6. Lewis v. Minneapolis Board of Education, Special School District No. 1, 408 N.W. 2d 905, 40 Ed. Law Rep. 991 (Minn. App. 1987).

The Minnesota Court of Appeals affirmed a Minneapolis Civil Service Commission decision that the school board had proven its charges of abuse of sick leave and appropriation of public funds by a preponderance of the evidence and that just cause existed to suspend Lewis without pay for 90 days. Lewis collected $10,739 in sick leave pay from the board from May until September in 1985 while holding a job as a truck driver for United Dressed Beef Company.

7. Board of Education of Laurel County v. McCollum, 721 S.W. 2d 703, 36 Ed. Law Rep. 1026 (Ky. 1986).

McCollum, a 13-year tenured teacher was employed as a homebound teacher. The superintendent of school brought charges against him for insubordination, violation of school rules and conduct unbecoming a teacher. It was determined by the board at a hearing that McCollum had deliberately and intentionally taken sick leave for the purpose of driving a coal truck to Ohio, and that he failed to visit a homebound student for the minimum required time.

The Supreme Court of Kentucky upheld the board's decision to terminate McCollum's contract.

Theft/Burglary

8. Kenai Peninsula Borough Board of Education v. Brown, 691 P. 2d 1034, 22 Ed. Law Rep. 439 (Alaska 1984)

Note: The Supreme Court of Alaska distinguished this case from Morrison, principally on statutory grounds. The Alaska court said the statutes in Alaska make it unnecessary for the court to find a nexus between the teacher's act of moral turpitude and unfitness to teach.

"Such a concern [definition of immorality] is not present under Alaska law. The determination of what constitutes immorality is not left to the board's discretion. Immorality is defined in the statute as an act constituting a crime involving moral turpitude. By defining immorality in this manner the legislature obviated the need for a separate showing of nexus. The finding that a crime involving moral turpitude has been committed raises at least a presumption that there is a nexus between the teacher's act and fitness to teach. The legislature, in enacting certain criminal statutes, has established minimum acceptable moral standards for the state as a whole. If a teacher cannot abide by these standards his or her fitness as a teacher is necessarily called into question."

Facts

- Roy E. Brown, a tenured high school teacher was convicted of diverting electricity from the Homer Electric Association, a misdemeanor under Alaska law. Brown was sentenced to jail and ordered to make restitution to the electric association.

- Brown was terminated from his position based on a statute which permits dismissal when a teacher commits an act which constitutes a crime of moral turpitude.

- The trial court reversed the school board's action. The school district filed an appeal in the Supreme Court of Alaska.

Ruling/Rationale of Supreme Court of Alaska

- The court said the trial court had sufficient cause to terminate the teacher's contract.

- The court said thefts are crimes of moral turpitude under Alaska law.

- A criminal conviction is not necessary.

9. Hainline v. Bond, 824 P. 2d 957, 72 Ed. Law Rep. 1113 (Kan. 1992).

Todd Hainline appealed from the judgment of the district court affirming the 140 day suspension of his teaching certificate imposed by the State Board of Education. The suspension was based upon the commission of an act of immorality, namely burglary and theft. The Kansas Supreme Court affirmed.

Facts

- On March 19, 1989 Wichita police discovered Hainline and a friend in the act of burglarizing a furniture warehouse. Hainline was arrested and charged with burglary and theft.

- At the time of the arrest Hainline was a certified Kansas teacher. He was employed as an art teacher in a local school.

- Hainline was suspended with pay by the school district.

- After Hainline entered into a diversion agreement (plea bargain) the school district transferred him to a different building in the district.

- The Secretary of the Professional Practices Commission of the State Board of Education filed a complaint with the commission seeking revocation of Hainline's certificate.

- The certificate was revoked for 140 days.

- Hainline filed suit in state court. The trial court and the Supreme Court of Kansas affirmed the commission's ruling.

Rationale

"Obviously, one of the goals of education is to instill respect for the law. Teachers are role models for their students. Hainline's burglary offense was publicized by Wichita media. There is at least a presumption that the felonious conduct has sufficient relationship or nexus to Hainline's fitness to teach to warrant action by the board. ...Teaching is a profession. Burglary is a felony. A professional code of conduct which requires a person not to commit a felony can hardly be considered arbitrary or capricious."

V. Summary

The current state of the law respecting teacher involvement in acts of moral turpitude is flow-charted in Figures I and II. Figure I pertains to alleged sexual misconduct by teachers. The legal analysis of other acts of moral turpitude is shown in Figure II. The standards incorporated in these flow charts have been developed by the courts since Morrison was decided in California twenty-five years ago. Today most courts analyze teacher misconduct cases in the fashion shown in Figures I and II. There are exceptions, however. The statutory scheme in some states, or the predisposition of some courts to uphold ruling by arbitrators regardless of the facts of the case, may produce a result that departs from the analyses in Figures I and II.

Overall, the past twenty-five years have seen a general trend of judicial leniency towards the teaching profession. While the courts are extremely aware of the "special role" teachers play in society, they nonetheless seem to have a growing tendency to balance these societal interests with those private "rights" of the teacher. Virtually no behavior except criminal offenses and student/teacher sexual relationships constitute immorality per se. The courts, since Morrison,

evaluate each situation on a case-by-case basis to determine whether the teacher's action have rendered him or her unfit to execute "the special position of leadership occupied by a teacher who serves as a role model and instills the basic values of our society" [McBroom v. Board of Education, 494 N.E. 2d 1191, 33 Ed. Law Rep. 404 (1986)].

Case law might suggest that with the exception of a few jurisdictions, the role model issue is either dead or dying. However, it is too early to celebrate or mourn its passing--depending on one's persuasions. Like the theory of "in loco parentis," another legal theory with a love/hate background, the exemplar issue may have more than one life. Just as Tinker in 1968 failed to put an end to in loco parentis, the current wave of privacy cases may not end the role model issue. This prediction seems safe for two reasons. First, the recent conservative political and moral swing in this country will be reflected in judicial rulings. More conservative judges will be appointed or elected to office. A more pragmatic reason to believe that the role model theory will survive exists in the utility of the theory itself. Courts can resurrect it any time they feel inclined to support a decision to terminate a teacher's contract or revoke his certificate and no better legal tools are available.

The "nexus" doctrine seems destined to survive for the balance of this century at least. Judges will continue to find that some private acts of teachers outside the school have an adverse effect on students. Not all constitutionally protected rights will escape such judicial scrutiny. Just as numerous public and private employees, such as professional athletes, jockeys and police officers, forfeit some measure of constitutional protection in their private lives in exchange for the privilege of pursuing their profession, teachers will be required to accept some quantum of their obligation to serve as role models for students.

Fig. 1. Sexual Misconduct

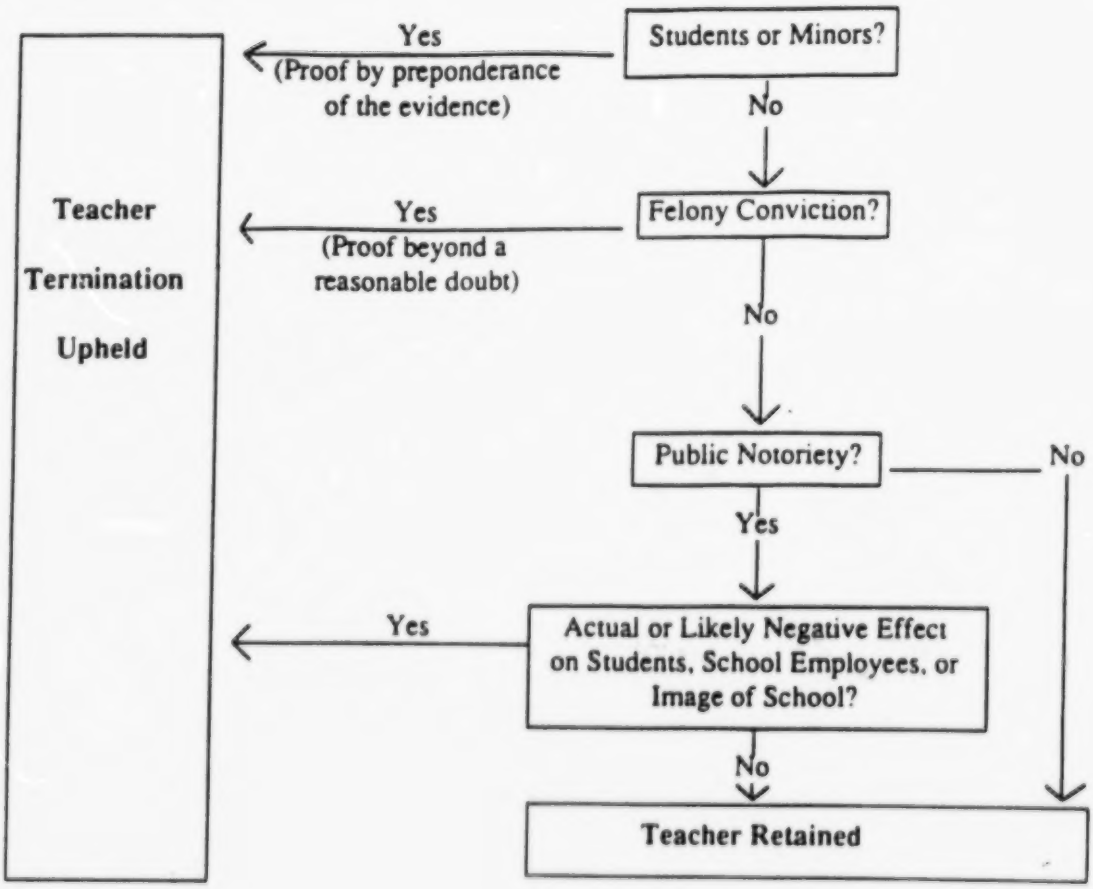

Fig. 2. Non–Sexual Misconduct

(Allegations of Acts of Moral Turpitude)

[Shoplifting, Welfare Fraud, Stealing School Property or Funds, Falsifying Records, Drug Possession or Distribution, Abuse of Sick Leave]